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Legal Dept

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**Subject:—** Opinions under the Official Trustees Act 1913.

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Office of the R.L.A.

In para. 4 of his letter at page 53 ante the Administrater General & Official Trustee, Bombay Observes:-

"Under the rules of the Reserve Bank of India as they now stand if securities are deposited with it for safe custody it would be obligatory that all purchases and sales of secutities for this office should be made through the Bank. If this is the position, the Official Trustee will have no choice whatever in the selection of the broker for the transactions of sale or purchase of securities. The transactions will be effected by the Bank through its own broker without any reference to the Official Trustee . The employment of a broker cannot in law be delegated by a trustee to a third person not even a Bank. The employment of a broker for investment of trust funds is not an act merely ministerial but involves discretion and the exercise of judgment. In this connection the previsions of section 47 of the Trusts Act II of 1882 must be considered."

2. The question referred to the R.L.A. for epinion is whether section 47 of the Trusts Act, 1882 debars the Official Trustee from entrusting the business of sale and purchase of securities etc. to the Reserve Bank through the Bank's brokers.

3. Rule 11 of the Official Trustees (Bombay) Rules, 1922 and rule 22 of the Administrater General (Bombay) Rulrs, 1922, pro ide that all Government secrities vesting in the Official Trustee and coming into pecsession of the Administrater General, shall be lodged, as soons practicable in the Bank for safe custody etc. Under clause (a) of section 28 of the Official Trustees Act, 1913, the Official Trustee may, in addition to and not in deregation of any other powers of expenditure lawfully exercisable by him,

incur expenditure on such acts as may be necessary for the proper care and management of any property belonging to any trust administered by him. Similar provision is contained in section 48(a) of the Adminstrator General s Act, 1913. Under section 7(2) of the Official Trustees Act, save as expressly provided, the Official Trustee has the same powers, duties and lisbilits and is entitled to the same rights and privileges and is subject to the same control and orders of the Court as any other ~~kkxxx~~ trustee acting in the same capacity. Subject to any speicl provision in the instrument cr e-ting the trust, the ~~kxxxkxx~~ trustee ~~xxyxxkxxxxx~~ may do acts which are reasonable and proper is is realizing the tnust property or for protecting it and may make payments which are necessary for the duex execution of the trust. (See para. 432 of Halsbury's Laws of England Vol. 33). Independently of the statutory provisions and of any provisions in the instrument creating the trust, a trustee may allow a co-trustee or employ an accountant, bailiff, bamker, broker, soliciter, workman or ether ~~xx~~ agent to act for him in affairs of the trust, and to receive and hold trust money and property where he is obliged to do so by com on usage, and would if he were a prudent man of business do so in a ~~xx~~ similar affair of his own. In every case the trustee must select the agent purdently ~~andxx~~ in good faith and must employ him only so far as the matter properly lies within his professional capacity or his position as agent and only so long as the matter requires. (See para 447 at pp. 251-52 ibid). The Administrator General and Official Trustee relies upon section 47 of the Indian Trusts Act, 1882. That section provides. -

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"47 A trustee cannot delegate his office or any of his duties either to a co-trustee or to a stranger, unless (a) the instrument of trust ax so provides, or (b) the delegation is in the regular course of business or (c) the delegation is necessary, or (d) the beneficiary, being competet to contract, consents to the delegation."

4. The several kinds of business which the Reserve Bank is authrized to carry on are specified in section 17a of the Reserve Bank of India Act, 1935. Under clause (a) of the said section, it can carry on the business relating to the custody of monies, securities and other articles of value and the collection of the proceeds whether principal, interest or dividends, of any such securities. Under clause (11) it can also act as an agentor Government for the purchase, sale and transfer of securities. A trustee is bound to exercise discretion in the choice of his agents, and so long as he selects pe sons properly qualified, he would not be liable for the le s. Since the Reserve Bank is competent to act as agent on behalf of Government for the sale and purchase of securities and since the securities are in its own custody, there appears no objection to appointing the Bank as agent to sell and purchase securities deposited with it. The objection of the Administrator General & Official Trustee to the appointment by the Reserve Bank of its own broker for effecting the sale and purchase of securities appears to be based on the assumption that such appointment would amount to delegation of the Administrator General's & Official Trustee's power to the Reserve Bank. It is not correct to say that in appointing a broker the Reserve Bank would be acting under any delegated authroity of the Administrator & Official Trustee. The Reserve Bank would itself be the agent of the Administrator General & Official Trustee and the broker appointed by it would be its sub-agent under section 191 of the Indian Contract Act.

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The Reserve Bank would be responsible to the Administrator General & Official Trustee for the acts of is its sub-agents. Consequently there is no question of delegating the powers of the Official Trustee to the Reserve Bank for appointing a broker to do his business. The view taken by the Adminstrator General & Official Trustee does not appear to be correct.

Sd/- P.N.H.

Remembrancer of Legal Affairs.

U.R. to F.D., No. 7986 dated 3rd November 1943.

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